THE INQUISITORIAL POWER OF THE FEDERAL GRAND JURY.—The power of a Federal grand jury to examine witnesses for the purpose of finding indictments or making presentments in the absence of a specific charge against a particular person, has come before the Supreme Court of the United States for the first time in a recent case of habeas corpus. *Hale* v. *Henkel*, U. S. Sup. Ct., March 12, 1906. The petitioner, who was summoned before the grand jury in certain investigations against the American Tobacco Co. and the MacAndrews & Forbes Co., refused to answer the questions propounded on the ground that there was no specific charge pending before the grand jury against any particular person. The court held that the grand jury may, before making a presentment or finding an indictment, examine witnesses, merely apprising them of the names of the parties under investigation without indicating the nature of the charge against them.

Under the English system of private prosecution the function of the grand jury was to stand between the accuser and the accused. And so it was customary to act only on a formal bill of indictment being laid before them, where acting at the instigation of a private prosecutor. But from the oath of the grand jurors, it was their duty to make presentment of all matters and things coming to their own knowledge. *Rex* v. *Shaftesbury* (1681) 8 How. St. Trials 759. And that no narrow meaning is to be attached to "their own knowledge," is shown by the case of *Earl of Macclesfield* v. *Starkey* (1684) 10 How. St. Trials 1330, where, though there was no specific charge, the grand jury examined witnesses to come at this knowledge.

Under the American system, however, where public has supplanted private prosecution, it is the general view that the grand jury represents the people. That is, the people and the prosecutor having become one, and it being assumed that the people will not act maliciously, there is no longer the necessity for the grand jury to shield the defendant. 2 Wilson's Works 213. Some traces of the other idea have been found in America which have survived the cause of their being. *Lloyd* v. *Carpenter* (1845) 3 Pa. L. J. 188. So under the American system the practice has grown up of not framing indictments until after the examination of witnesses. *State* v. *Freeman* (1843) 13 N. H. 488. That is, in America, the grand jury, in all cases, are practically in the position of the English grand jury when making presentments of matters that come to their own knowledge, *U. S.* v. *Hill* (1809) 1 Brock 156, and may, as in England in cases of presentment, examine witnesses as to the crime under investigation. This inquisitorial power of the grand jury was recognized in this country before the adoption of the fifth amendment, Addison's Pa. Rep. (1791) App. 38, and was fully supported by Mr. Justice Catson in the investigation in 1851 in Tennessee of the Cuban expedition. Wharton Crim. P. & P. § 337 *note*. The Federal courts have generally adopted this view, *Charge to Grand Jury* (1872) 2 Sawy. 667; *U. S.* v. *Kimball* (1902) 117 Fed. 156; *U. S.* v. *Terry* (1889) 39 Fed. 335, and dicta of Mr.

Justice Brewer in *Frisbie* v. *U. S.* (1895) 157 U. S. 160, and the contrary view in *U. S. v. Kilpatrick* (1883) 16 Fed. 765, was avowedly based on the state practice in North Carolina. In the States too, the weight of authority supports the decision in the principal case. *Ward* v. *State* (1829) 2 Mo. 120; *State* v. *Terry* (1860) 30 Mo. 368; *Commonwealth* v. *Smyth* (1853) 11 Cush. 473; *State* v. *Wolcott* (1851) 21 Conn. 272; *State* v. *Magrath* (1882) 44 N. J. L. 227; *Blaney* v. *Maryland* (1891) 74 Md. 153. Some state courts, however, following the English practice, still require a specific charge. *In re Lester* (1886) 77 Ga. 143; *Lewis* v. *The Board* (1876) 74 N. C. 194.

The chief objection to the doctrine of the principal case is the danger that the grand jury may abuse its powers, a danger more imaginary than real. For it is only through the courts that the attendance of witnesses may be enforced and punishment inflicted for refusal to answer. *Commonwealth* v. *Bannon* (1867) 97 Mass. 214; *Heard* v. *Pierce* (1851) 8 Cush. 338; *Ward* v. *State*, supra. The possession of the inquisitorial power, under such restraint by the courts, would seem to be of the greatest service to the people in the enforcement of the laws.

TRUSTS UPON PERSONAL CONFIDENCE.—It is now a well-settled rule of equity, that a trust will not be allowed to fail for want of a trustee. Perry, 5th ed., § 276*a* and cases cited; Ames Cases on Trusts, p. 230, n. 2. Even where a trust deed has failed to name a trustee, the court has inherent jurisdiction to appoint one. *Dodkin* v. *Brunt* (1868) L. R. 6 Eq. 580; Ames, p. 226, and cases cited. In every trust, certain general powers, although not expressly mentioned in the instrument creating the trust, are conferred upon the trustees by implication, for the successful execution of the trust, Perry § 473; *e.g.* the power to reserve trust lands, *Lerow* v. *Wilmarth & Trustee* (Mass. 1864) 9 Allen 382, to make repairs, *Sohier* v. *Eldredge* (1869) 103 Mass. 345, or to compromise debts due to the trust estate, *Forshaw* v. *Higginson* (1857) 8 DeG. M. & G. 827. Although these powers involve the exercise of discretion, they attach to the office, being connected with the management of the trust estate, and pass with the title to a subsequent trustee. They are to be distinguished from such special powers as lie in the personal confidence of the trustee named by the creator of the trust. The question is one of intention, to be ascertained from the nature and objects of the trust. *Trust Co.* v. *Sutro* (1892) 75 Md. 361, 365. The doctrine is founded on reason and ancient authority, that a discretion vested in the original trustee, cannot be exercised by the court or by a new trustee; for example, a discretion to settle a fund upon marriage with the trustee's consent, *Clarke* v. *Parker* (1812) 19 Ves. 1, or to pay over the income when the cestui's conduct should be satisfactory to the trustees. *Walker* v. *Walker* (1820) 5 Madd. 424, see also *Cochran* v. *Paris* (Va. 1854) 11 Gratt. 348, 356, or to pay an annuity unless circumstances render it inexpedient, *French* v. *Davidson et al.* (1818) 3 Madd. 396, or to increase an